MAGISTRATE'S CRIMINAL APPEAL.

R. H. Green for the appellant.

Bahaudin bin Yacob (Federal Counsel) for the respondent.

Storr J. : — The appellant, the manager of Kok Ann Estate, Pontian, Johore, pleaded guilty by letter to the offence under section 159(ii), Labour Code, Johore, and the learned President, after hearing the facts outlined by the Deputy Commissioner for Labour, Johore, and considering a joint report by the Health Officer, Johore South, and the Deputy Commissioner for Labour, convicted the appellant and fined him $5,000. The appeal is against the sentence only.

Mr. R. H. Green who appeared for the appellant stressed the point that the appellant was only the manager and not the owner and was also suffering, and had suffered for some years, from tuberculosis. He submitted that although the appellant as manager was liable, because the term "employer" included manager, yet it was not beyond the realm of possibility that he had no power to make the owners, who were really responsible, comply with section 159(i) of the Enactment, and in any event the fine was excessive; further that, in a case such as this, the appellant had no right of indemnity from the owners.

Che Bahaudin, Deputy Public Prosecutor, who appeared for the Controller of Labour, after stating that the facts disclosed a shocking state of affairs on the estate, left the matter to the Court.

Now I think that Counsel must have overlooked section 222 of the Enactment which reads :—

"In the event of any person within the definition of the word 'employer' being subjected to any fine or penalty under the provisions of this Enactment, such fine or penalty may, in addition to any other means of recovery, be recovered by distress and sale of the estate, mine or place of employment, or any property belonging to such estate, mine or place of employment."

That section makes it quite clear that although a manager can be proceeded against as the "employer" and convicted and fined, yet it is the owner against whom the section is aimed and it is the owner who, if the manager did not pay the fine, would have to pay, or the fine could be levied by distress and sale of the estate.

I think, therefore, that the main grounds stressed by Mr. Green in mitigation of the fine imposed by the learned President are nullified or perhaps, I should say, do not and could not apply to this case if the owners were personally before this Court.

The report (Ex. P2) shows a most deplorable state of affairs as regards the accommodation provided by the owners for the labourers: in fact it shows a complete lack of interest in their welfare and that they were left to live in a state a little better than animals. I am surprised that in these days such squalor has been permitted for so long.

Further, in view of the high price of rubber and the probable profits made by the owners, I consider that the appellant's lack of care as to the housing of the labourers is a very serious matter. In the circumstances of this case, I find it quite impossible to come to the conclusion that the learned President has in any way erred in law or that the sentence of a fine of $5,000 is manifestly excessive.

The appeal is dismissed.

Appeal dismissed.

Solicitors : *Braddell Bros.*

RAYNER v. RAYNER

[O. C. J. (Taylor J.) February 15, 1956]

[Singapore — Divorce No. 10 of 1955]

Divorce — Jurisdiction — Acquisition of domicil by choice.

This was a petition for dissolution of marriage. The petitioner-husband was born and educated in England and his domicil of origin is therefore English. It was necessary for him to show that he had acquired a domicil of choice in Singapore. It was argued that where a man has resolved not to reside again in his country of origin, the mere fact of residence in any other place, though for the purpose of employment, will show the acquisition of a new domicil.

Held: there was no evidence in this case to show that the petitioner had chosen Singapore as the place in which he will reside indefinitely and therefore on the facts the petitioner had failed to show that he had acquired a domicil here.

Cases referred to :—

(1) *Bates v. Bates* (1951) M.L.J. 95.

(2) *Marshall v. Marshall* (1956) M.L.J. 122.

DIVORCE, *In forma pauperis.*

J. L. P. Harris for the petitioner.

R. K. Booker for the respondent.

Taylor J. : — This is a husband's petition for dissolution of marriage under the local Divorce Ordinance; the petitioner was born and educated in England and it is clear that his domicil of origin was English; it is therefore necessary for him to show that he has acquired a domicil of choice in Singapore. The onus of proving a domicil of choice is, in law, a heavy one.

The petitioner is thirty years old. He joined the Army during the war and in 1946 went abroad with his unit; he met and married the respondent in India in 1947; they agreed that they would work in India but have their children educated in England. The husband continued in military service until 1948 when he elected to be demobilised in India, having obtained civil employment in the British High Commissioner's office. This continued till 1952 when his contract

expired; it was then difficult for him to obtain employment in India but at an interview in Calcutta he was appointed to the staff of Malayan Collieries at Batu Arang in Selangor, he went there direct from India, accompanied by his wife; they lived there together till 1952 when she went to England taking the two children of the marriage with her. The husband completed his engagement at Batu Arang in 1954 and then obtained work in Singapore, first on a short-term contract with a government department and then with a commercial firm by whom he is now employed with prospects of continuance. Soon after leaving England the petitioner lost touch with his parents; he found life in India agreeable and when his period of military service expired he chose to take civil employment in India rather than return to England although, at that time, he could easily have completed his training as a teacher, had he so desired. Four years later his state of mind, as expressed in his own words was :— "I wanted to obtain employment in the East — I like the East — I like the people and the climate." That showed a disposition to discard his domicil of origin but in India alone there are hundreds of races and languages and several different types of climate. The statement is too vague to shew a disposition to settle in India even if it had been practicable for him to settle there. He had a vague intention to reside somewhere in the East but that could not displace his domicil of origin which, in law, continues until he has made a choice of one definite territory as the place of his future residence. Conditions at Batu Arang were different from those at New Delhi. He came to know Malaya much better than he ever knew India and after three years there was no thought in his mind of working anywhere except in Malaya. I accept this but it refers to Malaya as a whole. There was never a time when he regarded Selangor as his country. The difference between one State and another, or between a State and a Settlement, was not in his mind.

If an Australian said : — "I will retire and live permanently in France", sold his property and went to France with his family, he might be held to have acquired a domicil of choice as soon as he arrived, though he might not have decided in what part of France he would live. If, however, he came to Great Britain in such an uncertain state of mind he would not acquire a new domicil until he had established himself either in England or in Scotland. No one can acquire a domicil in Australia, or in America, unless and until he has definitely settled in one specific State. Similarly domicil cannot be acquired in Malaya; the domicil of origin continues until the propositus has established himself either in Singapore, or in one particular State or Settlement, to the exclusion of all the others, as his place of permanent residence.

The case of this petitioner, as regards domicil, resembles that of *Bates*[1] in several respects and is clearly distinguishable from that of *Marshall*[2]. The latter had the option of continuing in an employment which involved transfer to another State, and probably further transfers, or of taking up a new appointment which meant remaining indefinitely in Singapore; he preferred the latter. This was a definite act of choice and in making it the dominant factor was his preference for Singapore as a place in which to reside.

When the present petitioner came to Singapore he came here solely in search of work; residence for the purpose of employment does not effect a change of domicil. Counsel for the petitioner argued that once a man has resolved not to reside again in his country of origin the mere fact of residence, though for the purpose of employment, in any other place, will show the acquisition of a new domicil. There is no authority for this proposition and in my view it is contrary to the general trend of the cases. I do not accept the view that the petitioner had successive domicils in India, Selangor and Singapore. I agree that he has given up the idea of returning to live in England but there is nothing to show that he has chosen Singapore as the place in which he will reside indefinitely. On the contrary, his own declaration shows clearly that his vague desire to live in "the East" has narrowed only into an intention to live somewhere in Malaya, meaning the Malay Peninsula and Singapore. Evidence was given as to his position under the Provident Fund legislation; it appears that the petitioner could be exempted from contributing if he satisfied the authority that he is domiciled elsewhere than in Singapore and that he is a member of an approved voluntary fund; he is a member of such a fund but he has not applied for exemption because he claims to be domiciled here. This point is both negative and technical; he has not applied.

The question cannot have arisen until some time after the petitioner came to Singapore and therefore after his cause of action had arisen. Any statement he made at such a time would probably be influenced by its possible relation to contemplated proceedings; even if he had made a positive declaration it would therefore have been of little weight; a mere omission to make a declaration in such circumstances has no real significance.

The petitioner wholly failed to shew that he has acquired a domicil in this jurisdiction and his petition was therefore dismissed on the preliminary issue. This would not appear to preclude him from proceeding either in England or under the Non-domiciled Rules.

Petition dismissed.

Solicitors : *Braddell Bros.; Allen & Gledhill.*